U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-A-B-

DATE: APR. 18, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a researcher in the field of medical technology, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation..

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had a one-time achievement or met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner submits a brief, stating that he meets four of the ten criteria, and that he has sustained national or international acclaim and is one of that small percentage of individuals at the very top of his field of endeavor.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Petitioner is a researcher in the field of medical science. Because he has not indicated or established that he has received a major, internationally recognized award, he must meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only two criteria.

On appeal, the Petitioner maintains that he meets two additional criteria.[1] We have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner participated as a judge of the work of others in his field. The record indicated that he served as a reviewer of papers submitted for three conferences. Accordingly, we agree with the Director's determination that he meets this criterion.

[1] Although the Petitioner initially claimed the membership under 8 C.F.R. § 204.5(h)(3)(ii), he does not contest the Director's finding that he did not establish eligibility for that criterion on appeal. Thus, we will not address it in this decision.

Evidence of the aliens' original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

The Director found that the Petitioner made scientific contributions of major significance in the field of medical technology. In reviewing the record on appeal, however, the evidence indicates that while the Petitioner has made original contributions, he has not established their significance. The Director based his decision, in part, on the application the Petitioner designed while employed at , a regional health care provider in New York state, using an algorithm tracking the Length of Stay, Acuity of Admission, Comorbidities, and Emergency Room visits in past 6 months (LACE). This LACE tool was designed to evaluate the probability that a patient would be readmitted to a hospital after discharge. founder and CEO of indicates that the Petitioner's LACE tool reduced patient readmissions at by 26%, and that it has been implemented at three other hospitals. However, letter does not indicate that he has any affiliation with the named hospitals, and the nature of his affiliation with is unclear.

Senior Vice President of , states in his letter that while employed at he became aware of the Petitioner's LACE tool through its submission at the 2011 conference, where it won a $10,000 prize. also mentions two of the three hospitals that are adopting the LACE tool, but also does not claim any affiliation with those hospitals. The record lacks corroborating evidence to support the claims in these letters, which were written by experts lacking first-hand knowledge of the implementation of this application. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126 at 135-136 (concluding that the decision of USCIS to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

The record also includes evidence of the Petitioner's work on a radio frequency identification project while at Director, Clinical Informatics at and the Petitioner's former colleague while at describes this project as patient tracker technology designed to monitor the location and wait times. describes this as a successful project which was implemented in emergency departments. However, while his letter states that this technology is applicable to hospitals nationwide, the record does not support a finding that the Petitioner's software was implemented outside of facilities to have an impact upon the broader field of medical technology.

The Petitioner submitted evidence of a patent application for the mobile application. As described by of the he worked with the Petitioner in developing this application, which allows his patients to transmit self-recorded blood pressure, blood sugar and heartrate measurements to their healthcare provider in real time, as well as interfacing directly with electronic medical records. The record indicates that and his partners use the application with approximately 2,000 patients, but it does

not support the petitioner's claim of nationwide adoption, or establish that this localized usage of the application indicates a contribution of major significance to the field.

In addition, states in his letter that the Petitioner was the lead software developer and designer for another telemedicine project that allows doctors and patients to exchange pictures and videos in real time to remotely diagnose a condition. indicates that is currently in use in 36 states, but the record does not include corroborating evidence to support this claim. Furthermore, the record does not establish that the Petitioner's development of this application has made such an impact on the field of medical technology that it represents a contribution of major significance to the field. Accordingly, the record does not support the Director's finding that the Petitioner has met this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi)

In his decision, the Director acknowledged that the Petitioner submitted evidence of having authored three peer-reviewed papers which were presented at scientific conferences, and included in the proceedings of those conferences. However, he concluded that this evidence did not establish that the papers had been published in professional or major trade publications or other major media. The record indicates that at least two of the papers authored by the Petitioner, presented at the 2015 and the 2014 were published as full papers in the proceedings of those conferences. Accordingly, we find that the Petitioner has met this criterion.

> *Evidence that that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner asserts on appeal that he meets this criterion by virtue of his positions at and . The Director acknowledged in his decision that has a distinguished reputation. However, review of the record reveals that the evidence submitted with the original submission, and again on appeal, relates to a Fortune 500 company operating 225 healthcare facilities in 37 states. The Petitioner also refers to that evidence in his initial filing and RFE response briefs when describing his actual former employer. According to its website, is a regional healthcare system located in New York State's Third Tier, with 60 locations including 3 hospitals.[2] As the record does not establish that has a distinguished reputation, we overrule that part of the Director's decision.

In his decision, the Director also concluded that the Petitioner had not established that his role for was leading or critical. On appeal, the Petitioner relies upon two letters to show that his position as Senior Business Intelligence Lead Analyst qualified. explains the Petitioner's

[2] https://

role in improving billing and processing systems, as well as his implementation of the LACE algorithm, which states reduced readmissions and patient wait time at hospitals. Similarly, Chief Medical Information Officer for and a former colleague at briefly mentions the same two projects, and also describes the software that the Petitioner developed for use by the emergency departments there. Neither these letters nor other evidence in the record indicates that he operated at a senior level within organizational hierarchy commensurate with a leading role. While the Petitioner worked on important systems at , the record lacks evidence corroborating the claims made by and regarding his role and its overall impact on the organization.

To demonstrate the Petitioner's role with the Petitioner provides a letter from its Chief Medical Informatics Officer, who identifies the Petitioner's job title as Director and describes his creation and leadership of a new department called He also describes two projects developed by the Petitioner while at a workflow system and a Virtual Intensive Care Unit. This letter does not establish that the Petitioner played a leading role for , as it does not identify the size of the team he lead, or its position within organizational hierarchy. Similarly, the letter does not demonstrate that the Petitioner played a critical role. While claims that "has been able to grow at a rapid pace" and push into new areas of healthcare, the record lacks supporting evidence of the impact of the Petitioner's work on the organization. Thus, the Petitioner has not established that he performed in a leading or critical role. Accordingly, the Petitioner does not meet this criterion.

III. CONCLUSION

The evidence does not establish that the Petitioner meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-A-B-*, ID# 1069683 (AAO Apr. 18, 2018)